

C. DENNIS LOOMIS, Bar No. 82359
BAKER & HOSTETLER LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Telephone: (310) 820-8800
Facsimile: (310) 820-8859
Email: cdloomis@bakerlaw.com

JOHN R. FORNACIARI (admitted *pro hac vice*)
BAKER & HOSTETLER LLP
1050 Connecticut Ave., NW, Suite 1100
Washington, D.C. 20036
Telephone: (202) 861-1612
Email: jfornaciari@bakerlaw.com

Attorneys for Defendants
Soshin Electric Co., Ltd. and
Soshin Electronics of America Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In RE CAPACITORS ANTITRUST
LITIGATION,

Master File No. 14-cv-03264-JD

Hon. James Donato

This document Relates to:

ALL ACTIONS

**MEMORANDUM OF POINTS AND
AUTHORITIES OF DEFENDANTS
SOSHIN ELECTRIC CO., LTD.
AND SOSHIN ELECTRONICS OF
AMERICA INC. IN SUPPORT OF
THEIR PHASE II FTAIA
SUMMARY JUDGMENT MOTION**

**DATE: March 23, 2017
TIME: 10:00 a.m.
CTRM: 11**

Defendants Soshin Electric Co., Ltd. and Soshin Electronics of America Inc.
(collectively, the “Soshin Defendants”) hereby file this Memorandum of Points and
Authorities in support of their Phase II summary judgment motion.

**THE COURT'S AUTHORIZATION FOR THE
FILING OF THE INSTANT MOTION**

In the Court's Result of Hearing dated July 20, 2016 [Docket No. 1253], the Court anticipated that the Court would soon be issuing its Phase I FTAIA Order resolving the parties' legal disputes about the scope of the FTAIA, and the Court issued the following directions to the parties:

After reviewing the order, the parties are directed to meet and confer about its application to the facts in the case. The goal is for the parties to resolve informally to the fullest possible extent the transactions and defendants that should remain in the case under the Court's FTAIA holdings, and those that should be excluded.

To the extent the parties cannot in good faith agree, defendants should plan to file "Phase II" FTAIA motions. The Court expects these motions will be brought on an individual defendant basis, and they should be limited to presenting the facts that are specific to that defendant. While defendants may make arguments about how the Phase I rulings should be applied to those facts, these Phase II briefs are not an opportunity to argue for a reconsideration of the Phase I legal rulings.

[Result of Hearing dated July 20, 2016 at p. 2].

On September 30, 2016, the Court issued its Phase I FTAIA Order [Docket No. 1302]. Therefore, pursuant to the Court's instructions, the Soshin Defendants sought to have an individual meet and confer with the DPP's about the application of the Court's Phase I FTAIA Order to the facts of the case pertaining to the Soshin Defendants and, hopefully, to resolve the DPP case insofar as it pertains to the Soshin Defendants. [Exhibit A hereto]. Unfortunately, the DPP's did not respond to the Soshin Defendants' request for an individual meet and confer, necessitating the filing of the instant motion.

The DPP's and some of the Defendants have filed a Stipulation and Order pursuant to which the DPP's preserve their right to appeal the Court's Phase I

1 FTAIA Order but agree that the DPP's will only seek certification of a class limited
 2 to purchasers of capacitors that are billed to entities in the U.S., as well as
 3 purchasers of capacitors billed to foreign entities but shipped to the U.S. Thus, it
 4 appears to Soshin, that the DPP's have conceded that they lack the facts necessary
 5 to thread the needle under the Court's Phase I FTAIA Order as to capacitors billed
 6 and shipped to foreign entities. However, Soshin has filed the instant motion to
 7 present to the Court the facts specific to the Soshin Defendants establishing that
 8 summary judgment should be entered in their favor against the DPP action in its
 9 entirety.

10 **THE FACTS SPECIFIC TO THE SOSHIN DEFENDANTS**

11 The Defendant Soshin Electric Co., Ltd. ("Soshin Japan") is a Japanese
 12 corporation headquartered in Tokyo and is a manufacturer and seller of a wide
 13 range of electronic products including stand-alone film capacitors. [Miyakawa
 14 Decl. ¶¶ 3, 5].¹ From 2002 to 2014, Soshin Japan only manufactured stand-alone
 15 film capacitors at a single manufacturing plant located in Miyazaki, Japan at which
 16 other electrical products were manufactured as well [Miyakawa Decl. ¶ 5]; and
 17 during this time period Soshin Japan sold no stand-alone film capacitors which
 18 were billed or shipped to entities in the United States. [Miyakawa Decl. ¶ 5]. The
 19 Defendant Soshin Electronics of America Inc. ("Soshin America") is a wholly-
 20 owned U.S. subsidiary of Soshin Japan which sells electronic products
 21 manufactured abroad by Soshin Japan in the United States. [Miyakawa Dec. ¶ 4].
 22 During 2002 to 2014, Soshin America had only 2 to 3 employees and did not sell,
 23 deliver, or bill any stand-alone film capacitors to entities in the United States or
 24 anywhere else in the world. [Miyakawa Decl. ¶ 6].

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 27 ¹ Citations to the "Miyakawa Decl." are to the Declaration of Makoto Miyakawa
 28 submitted herewith. Mr. Miyakawa is the Manager of the Planning Department in
 the Sales & Marketing Division of Soshin Japan and has been employed at Soshin
 Japan for 31 years.

1 Since Soshin Japan is the only one of the two Soshin Defendants that
2 manufactured, sold and delivered stand-alone film capacitors, the remainder of
3 these facts focus on Soshin Japan's stand-alone film capacitor business and only
4 incidentally upon Soshin America. These facts detail the nature and scope of
5 Soshin Japan's stand-alone film capacitor business. However, the salient fact is
6 that, from 2002-2014, Soshin Japan sold no stand-alone film capacitors that were
7 billed or shipped to entities in the United States. [Miyakawa Decl. ¶ 5].

8 Stand-alone film capacitors account for less than 10% of Soshin Japan's total
9 sales of all products. [Miyakawa Decl. ¶ 7]. Stand-alone film capacitors are sold
10 world-wide and Soshin Japan's world-wide market share for stand-alone capacitors
11 is only approximately .045%. [Miyakawa Decl. ¶ 9]. Soshin Japan's sales and
12 deliveries of stand-alone film capacitors are almost exclusively to entities in Japan.
13 Soshin Japan's sales data establishes that, from 2001 to 2014, Soshin Japan's global
14 sales revenue for stand-alone film capacitors was approximately ¥ 9.1 billion, of
15 which ¥ 9.08 billion, or 99.8%, was for sales of stand-alone film capacitors to
16 entities in Japan. [Miyakawa Decl. ¶ 10].

17 Soshin Japan's main customers in Japan are heavy machinery manufacturing
18 companies and manufacturers of railroad switches. [Miyakawa Decl. ¶ 16]. Each
19 of these customers has its own specifications, sizes, voltages and capacitance
20 requirements. [Miyakawa Decl. ¶ 16]. Virtually all of the stand-alone film
21 capacitors sold by Soshin Japan are manufactured by Soshin Japan according to the
22 specifications, voltages, capacitance, shape and design requested by Soshin Japan's
23 customers. [Miyakawa Decl. ¶ 15]. Approximately 90% of these stand-alone film
24 capacitor sales are negotiated bilaterally in Japan between Soshin Japan and its
25 customers in Japan. [Miyakawa Decl. ¶ 14]. Unique customer specifications affect
26 the prices for Soshin Japan's stand-alone film capacitors which are priced in a wide
27 range of between ¥ 500 to ¥ 10,000 (approximately \$5 to \$100 per unit).
28 [Miyakawa Decl. ¶ 17].

1 Soshin Japan makes some sales of stand-alone film capacitors to distributors
 2 in Japan and in other Asian countries. From 2002 to 2014, 6.13% of Soshin Japan's
 3 sales of stand-alone film capacitors in Japan were to distributors in Japan.
 4 [Miyakawa Decl. ¶ 13B]. These Japanese distributors either have agreements with
 5 Soshin Japan to limit their shipment of stand-alone film capacitors to Japan, or in
 6 fact, limit their shipments of stand-alone film capacitors to end users in Japan or to
 7 manufacturing plants in other Asian countries owned by Japanese corporations.
 8 [Miyakawa Decl. ¶¶ 13B]. The distributors in other Asian countries who purchase
 9 stand-alone film capacitors from Soshin Japan do not sell Soshin Japan's stand-
 10 alone film capacitors outside of their respective sales territories in Asia.
 11 [Miyakawa Decl. ¶ 18]. Soshin Japan's direct sales of electronic products to
 12 entities in the United States has been exclusively to six customers. [Miyakawa
 13 Decl. ¶ 12]. None of the sales were of stand-alone film capacitors. [Miyakawa
 14 Decl. ¶ 12].

15 As to Soshin America, Soshin America has never employed more than three
 16 employees and has never sold stand-alone film capacitors in the United States or
 17 elsewhere from 2002 to 2014. [Miyakawa Decl. ¶ 6]. Rather, Soshin America's
 18 business in the United States consisted of sales of products such as L/C filters,
 19 printed filters, ceramic couplers, multi-layered dielectric filters, and coaxial type
 20 dielectric filters. [Miyakawa Decl. ¶ 11].

21 ARGUMENT

22 **The Court Should Enter Summary Judgment in Favor of the** 23 **Soshin Defendants Under the Court's Phase I FTAIA Order**

24 In its Phase I FTAIA Order, the Court rendered legal rulings as to the scope
 25 and applicability to this action of the FTAIA, 15 U.S.C. § 6a. Of particular
 26 importance to the Soshin Defendants, the Phase I FTAIA Order holds that under the
 27 FTAIA, the Sherman Act does not encompass claims arising from stand-alone
 28 capacitors billed and shipped to foreign entities unless the DPPs proffer facts in

1 Phase II showing that the DPPs can “get through the eye of a needle” by
 2 establishing that the domestic effect in the United States of the alleged DPP
 3 conspiracy was the proximate cause of the alleged injuries of foreign purchasers.
 4 [Phase I Order at pp. 8-11]. The Court further held that, in attempting to thread this
 5 needle, the DPP’s could not utilize a global pricing theory. [*Id.*].

6 The DPP’s have not threaded the needle under the FTAIA vis-à-vis the
 7 Soshin Defendants. All of Soshin Japan’s sales of stand-alone film capacitors were
 8 billed and shipped to entities outside of the United States, and the overwhelming
 9 percentage of Soshin Japan’s sales of stand-alone film capacitors consists of the
 10 sale, billing, and delivery of customized stand-alone film capacitors to entities in
 11 Japan. As for Soshin America, it did not bill or ship stand-alone film capacitors to
 12 entities in the United States or anywhere else in the world. Since neither Soshin
 13 defendant billed or shipped stand-alone film capacitors to entities in the United
 14 States, Soshin Japan’s stand-alone film capacitors sales had no domestic effect in
 15 the United States and, therefore, there was no predicate domestic effect in the
 16 United States that could have proximately caused the injuries, if any, to the foreign
 17 purchasers outside of the United States. In addition, even positing, *arguendo*, that,
 18 somehow, there was a domestic effect in the United States, it is implausible that the
 19 alleged injuries to Soshin Japan’s customers in Japan, which constituted an
 20 overwhelming 99.8% of Soshin Japan’s total stand-alone film capacitor sales, were
 21 proximately caused by a domestic effect in the United States as opposed to conduct
 22 undertaken in Japan. Under the legal rulings contained in the Court’s Phase I
 23 FTAIA order, summary judgment should be entered in favor of both Soshin Japan
 24 and Soshin America against the DPP action in its entirety.

25 CONCLUSION

26 For all of the foregoing reasons, Defendants Soshin Electric Co., Ltd. and
 27 Soshin Electronics of America, Inc. respectfully request that the Court grant their
 28

1 Phase II FTAIA summary judgment motion and enter summary judgment in their
2 favor against the DPP action in its entirety.

3 Respectfully submitted,

4 Dated: January 9, 2017

BAKER & HOSTETLER LLP

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6 By: /s/ C. Dennis Loomis
C. Dennis Loomis

7
8 C. Dennis Loomis, Bar No. 82359

BAKER HOSTETLER LLP

11601 Wilshire Boulevard, Suite 1400

Los Angeles, CA 90025

Tel: (310) 820-8800

Fax: (310) 820-8859

cdloomis@bakerlaw.com

13 John R. Fornaciari

BAKER & HOSTETLER LLP

1050 Connecticut Ave., N.W., Suite 1100

Washington, D.C. 20036

Tel: (202) 861-1612

Fax: (202) 861-1783

jfornaciari@bakerlaw.com

18 *Attorneys for Defendants*

19 *Soshin Electric Co., Ltd and Soshin*
20 *Electronics of America Inc.*